

IN THE MATTER OF THE
REVOCATION OF: LICENSING
AUTHORITY OF:

Mark E. Rover

HEARING NO. 10-HR-0017

ORDER

I, Michael T. McRaith, Director of the Illinois Department of Insurance, hereby certify that I have read the Record in this matter and the hereto attached Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Louis Butler, appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer attached hereto and made a part hereof.

I, Michael T. McRaith, Director of the Illinois Department of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Article XXIV and Article XXXI of the Illinois Insurance Code (215 ILCS 5/401 et. seq. and 215 ILCS 5/500-5 et. seq.) and Article X of the Illinois Administrative Procedure Act (5 ILCS 100/10-5 et. seq.).


This Order is a Final Administrative Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et seq.). Further, this Order is appealable pursuant to the Illinois Administrative Review Law (735 ILCS 5/3-101 et seq.).

NOW IT IS THEREFORE ORDERED THAT:

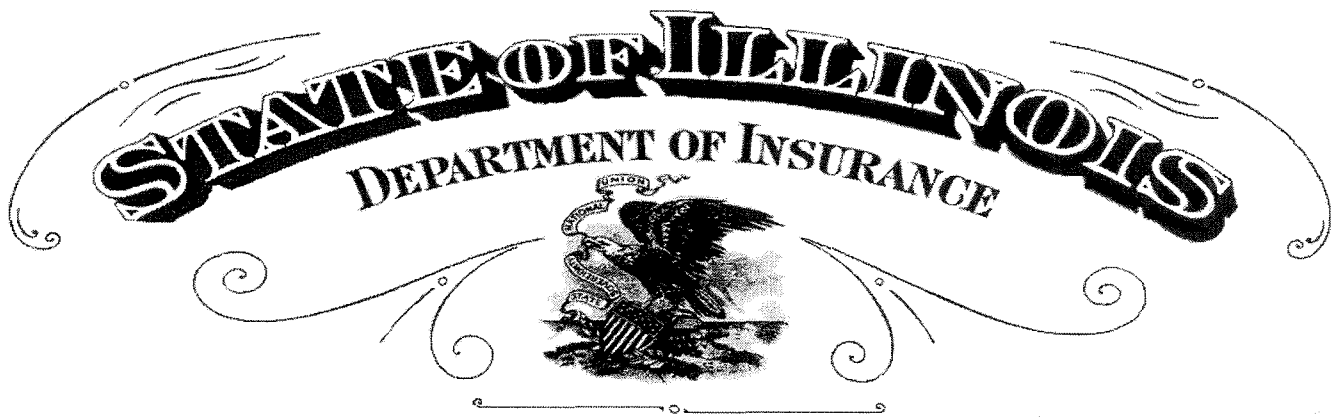
- 1) The Order of Revocation previously issued in this matter to the Respondent, Mark Rover, is sustained; and
- 2) That the costs of this proceeding are waived.

DEPARTMENT OF INSURANCE
STATE OF ILLINOIS

Date: 11 March 2010



Michael T. McRaith
Director



IN THE MATTER OF THE
REVOCATION OF: LICENSING
AUTHORITY OF:

HEARING NO. 10-HR-0017

Mr. Mark E. Rover
3 Canyon Court
Algonquin, IL 60102

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATIONS OF THE
HEARING OFFICER**

Now comes Louis Butler, Hearing Officer, in the above-captioned matter and hereby offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

- 1) On December 18, 2009 the Director issued an Order of Revocation of Respondent's Illinois Insurance Producer's license. (Hearing Officer Exhibit # 2)
- 2) On or about December 30, 2009 the Illinois Department of Insurance (Department) received a Request for Hearing from the Respondent. (Hearing Officer Exhibit # 2)
- 3) On January 12, 2010 Director of Insurance, Michael T. McRaith, (the Director), executed an Authority to Conduct Hearing. (Hearing Officer Exhibit # 1)

- 4) On January 12, 2010 the Director issued a Notice of Hearing in this matter setting a Hearing date and location of February 10, 2010 at 10:00 a.m. at the Department's offices in Chicago, Illinois. Also attached to the Notice of Hearing is the certified mail receipt. (Hearing Officer Exhibit # 2)
- 5) On or about January 12, 2010, Michael Heinle filed a Notice of Appearance as counsel for the Department in this matter. (Hearing Officer Exhibit # 2)
- 6) On January 12, 2010 the Director appointed Louis Butler as Hearing Officer in this matter. (Hearing Officer Exhibit # 1)
- 7) The Hearing in this matter was convened at the Department's offices in Chicago, Illinois at 10:00 a.m. on February 10, 2010 at which time were present Louis Butler, Hearing Officer, Michael Heinle on behalf of the Department, and Richard Nitka with the Department. Respondent was present. Ms. Simone Arthur and Regence Norwoods, with the Department, were present but did not testify.
- 8) The purpose of this proceeding was to determine the Respondent's eligibility to hold an Illinois Insurance Producer's license and to determine whether the Director's Order of Revocation of the Respondent's license should stand.

In the Department's case-in-chief Mr. Nitka testified as follows:

- 9) He is employed by the Department as a Supervisor in the Producer Regulatory Unit.
- 10) He has been employed by the Department for 26 years. He has been in his current position for seven years.
- 11) His general duties include overseeing examiners and investigators in the unit with regard to cases they are assigned.
- 12) As part of his job duties he had the opportunity to review Respondent's files.
- 13) Department Exhibit # 1 is from the Superior Court of California, County of Los Angeles, document number SA062371 in the matter of State of California vs. Mark Edmond Rover. The document is a certified record and was obtained from the State of California.
- 14) Department Exhibit # 1 indicates Respondent committed the felony offense of stalking.
- 15) Department Exhibit # 2 is an NAIC application for Individual Insurance Producers License. Mr. Nitka indicated that the document was obtained from the (Department's) Licensing Section. Respondent's name appears on the document. The application was signed on April 21, 2009.

- 16) Question one on Department Exhibit # 2 asks: "Have you ever been convicted of a crime had a judgment withheld or deferred or are you currently charged with committing a crime?" Respondent answered "No" to this question.
- 17) Department Exhibit # 3 is a Temporary Licensing Request Form. The document was signed by Respondent on February 1, 2009. Mr. Nitka indicated that the document was obtained from the (Department's) Licensing Section.
- 18) Question three on Department Exhibit # 3 asks: "Have you ever been convicted of a felony?" Respondent answered "No" to this question.

Respondent had no questions on cross examination.

On examination by the Hearing Officer Mr. Nitka testified as follows:

- 19) The standard procedure for obtaining Department Exhibit # 1 is that the investigator would contact the Circuit Court, all jurisdictions, and request certified copies of the documents. Mr. Nitka thinks the standard procedure was followed in this case.
- 20) Respondent was convicted of a felony in March 2007. The Department received his temporary license application (Department Exhibit # 3) in or about March 2009. The Department received Department Exhibit # 2 in or about April 2009. Mr. Nitka believes the Department opened the file on Respondent on April 17, 2009. Therefore, the file was opened before the Department received Department Exhibit # 2.
- 21) Mr. Nitka was unaware why the Department opened the file. The investigation file was done by Dorothy Daughtel in Springfield. There was no picture or Social Security Number on Department Exhibit # 1 that indicates that Respondent is the same Mark Rover identified in the document.

Respondent testified in his case-in-chief as follows:

- 22) Respondent was appearing to ask the State for leniency. In December 2009, he got a letter stating that his license was revoked after being in force for a year.
- 23) He had been living in California for the past 28 years. He was running his own construction business.
- 24) During 2006 he was doing work at an art studio. He was behind schedule after taking too many add-ons and the owner decided to terminate him. He was upset and returned to the business to try to work things out, but to no avail.
- 25) The owner went to the authorities and he was charged with a felony. Respondent said he never used force nor did this have anything to do with fraud or misrepresentation or misuse of funds.

- 26) While incarcerated he plea bargained since he could not afford an attorney. He worked at the Salvation Army and waited to move back to Illinois with family and get a new start.
- 27) One day at church he met a man who was looking for people to sell long term care and he suggested Respondent join his company and apply for a temporary license. He ordered the books and studied for the life and health test. He had no idea he should call the State right away to find out what is needed to qualify.
- 28) After receiving the revocation, he spoke with Dorothy Daughtel in Regulation and she mentioned he should have sent in the information about his past to see if he qualified for a producers license before ordering the books.
- 29) He checked the wrong box out of being stressed and surprised by the question. He was hoping that by the time the license was issued his probation would be over.
- 30) He called the Department and spoke to Barbara Dyer in Licensing. She said that as long as he didn't get arrested for fraud or money issues he'd probably be okay, but he should send his information to Brett Berger.¹
- 31) He sent in the papers from California stating his case and a letter of support from his probation officer. The probation officer stated he was in compliance and was eligible for early termination of probation.
- 32) He didn't hear anything and shortly thereafter got his license in the mail. He spoke with his probation officer who said the State had requested more information. He was concerned and held off from actually selling insurance.
- 33) He is interested in seeing if the Board (Department) would consider reinstating his license or at least waiving any fines or fees. He has been unemployed and suffered a hardship.
- 34) Respondent produced three Exhibits. Respondent's Exhibit # 1 is letter from a company called Etherabond and its President Chris Margarites. Respondent had been a contractor for Margarites' company and Margarites offered the letter as a reference to Respondent's character.
- 35) Respondent Exhibit # 2 is a letter from Pastor David A. Eichmann of Harvest Bible Chapel. Pastor Eichmann states that Respondent realizes he has made mistakes but is committed and growing in following truth.
- 36) Respondent Exhibit # 3 is a facsimile from Dave Corning of CFM Insurance. Mr. Corning knows Respondent from Harvest Bible Chapel. He states Respondent is a dependable person who is consistent in his class attendance. Mr. Corning would characterize Respondent as humble and teachable.

¹ Brett's last name is actually Gerger.

- 37) The Department did not object to the entry of Respondent's Exhibits, but asked that they be given limited weight since the authors were not present to be cross examined.

On cross-examination Respondent testified as follows:

- 38) He may have gone to the construction site twice to confront the owner.
- 39) He did not really make any threats. He talked to the woman that worked there, (because) it was not looking good for the owner to ignore him. He was seeking a money settlement for the work he had done.
- 40) He was friends with the business owner. There was about \$6,000 on dispute. He did not file a lawsuit. He did not file a lawsuit because he was in jail. There was an order of protection.
- 41) Respondent has another prior conviction in California. About eight or ten years ago he believes he was convicted of a felony. The conviction was for lewd conduct, it might have been 14 years ago.
- 42) He has never had an order of protection prior to the stalking incident. There was restitution ordered for the stalking conviction. He went to the Salvation Army for six months and had anger management classes. He successfully completed those. At the time of the hearing he was still on probation.
- 43) He believes he was incarcerated for 90 days. He subsequently worked for the Salvation Army as a truck driver. Respondent admitted to doing drugs previously, but he quit before the incarceration. He has been sober for three years. He attends meeting of Narcotics Anonymous and is more involved in church.
- 44) After the stalking conviction he lost his company. Since his conviction he worked in a tile shop for a retail business that pays on commission. He worked for Caputo's in the deli section. It was for younger people and the pay was really low. He has worked for a friend doing little jobs for him.
- 45) He is living with his family. David Corning of CFM Insurance is a friend from church.
- 46) If granted a license he would probably sell property and casualty insurance with a partner in Woodstock. His license is currently for life and health insurance. He was in the midst of studying property and casualty when he got the revocation.
- 47) The lewd conduct conviction was because he was in a car with a girl and he was exposed. He did not receive prison time for this incident. He successfully completed his probation for that incident.

- 48) With respect to Department Exhibit # 3, he marked “No” to the question concerning any felony convictions because a sales person he knew at United Teachers Association told him to.
- 49) Respondent worked for the United Teachers Association for about two months. He wrote a few policies, but he does not think they were put through.
- 50) Respondent answered “No” to the question regarding convictions on Department Exhibit # 2 because he did not treat it with as much seriousness. He did not think it was on his record.

On examination by the Hearing Officer Respondent testified as follows:

- 51) The girl in the car related to the lewd conduct conviction was 21 years old. He was probably 30. The girl was not a relative. He does not believe the girl was charged.
- 52) Mr. Margarites (Respondent Exhibit # 1) was not aware of the prior lewd conduct conviction when he wrote the letter. Neither Mr. Eichmann nor Mr. Corning were aware of the prior lewd conduct conviction when they wrote their letters.
- 53) Respondent sees Mr. Margarites outside of work. Respondent met him through Long Grove Church where he plays drums on occasion. Respondent met him at the tile shop and he learned he played the drums and asked him to play drums for his church. He sees Mr. Margarites every Sunday at church. When he worked for him he saw Mr. Margarites every day. Sometimes he was invited over to Mr. Margarites’ house for dinner.
- 54) Respondent has known Mr. Eichman for about a year when he started going to the Harvest Bible Chapel. He is friends with Mr. Eichmann, but does not see him on a social basis. They were on a men’s retreat in Michigan.
- 55) Respondent has known Mr. Corning for about a year. He does not see him socially. Mr. Eichmann taught a men’s boot camp course that he took at Harvest Church.
- 56) Respondent is not married. He graduated from Maine North High School in DesPlaines, Illinois. He did not attend college. He went to construction school and private music classes. He had a general contractor’s license in California.
- 57) He has not applied for a general contractor’s license in Illinois. He has thought of applying for a general contractor license in Illinois, but is not sure if he is eligible.
- 58) His bail for the stalking incident was \$150,000. It was pretty high and that is why he spent 90 days in jail. He pled guilty, that was the only way to get out. He had been doing construction in California for 22 years.

- 59) This incident was not the first time someone had gone bad on a payment for work he had done. However, in those jobs he paid whatever problems they had with the work he did. By that, he meant that if they had problems with his work they asked for funds back. Basically he settled.
- 60) His construction license was suspended or revoked in California when he was convicted of stalking. He did not go through a hearing regarding his construction license. Respondent stated his (contractor's) bond paid off the customer. Once you don't have a bond for your contractor's license your state license is basically suspended.
- 61) Respondent moved back to Illinois about a year and a half ago.
- 62) In his 22 years in the construction business he has had other payment disputes. He had arbitration once, but he has not filed any small claims disputes or taken anyone to court. They only allow you to do arbitration once in California. The legal process was not unfamiliar to him.
- 63) He thinks he served a three year probation period for the lewd conduct conviction. That was the first arrest he ever had. He was dating the girl. The girl was not a prostitute. He thinks he met the girl in a club. He does not believe this was the first time he had met her. He believes he had contact with her after the arrest. He believes she was not arrested because she was dressed and he was not.
- 64) The job he might have in Woodstock (Illinois) is with John Jones (insurance broker). Jones was going to give him a letter of reference also, but Respondent did not have time. Mr. Jones is not aware of the lewd conduct conviction.
- 65) He did not tell Mr. Jones because he was trying to start anew. In rehab they tell if somebody asks you, mark it but explain that you have changed. He feels he has done that.
- 66) He marked "No" on the two applications, basically because it was the end of his probation and he was hoping to have it over. Mr. Jones is aware of the stalking conviction. He thinks Mr. Jones has had his own company a couple of years.

On re-direct examination by Mr. Heinle Respondent testified as follows:

- 67) Respondent has no children. He was not involved in any type of administrative suspension or hearing regarding his construction license. His license (in California) is suspended because he does not have a bond.
- 68) On Department Exhibit # 2 Respondent answered "No" to the question concerning whether he had a license censured, suspended, revoked, cancelled, etc. Respondent stated the question was a little gray. His (contractor's) license was not suspended

because of anything he did, but it doesn't say anything about your bond being suspended.

69) Respondent has no outstanding delinquent tax obligations.

70) Amicus Court Reporters, Inc. recorded the testimony taken in this proceeding and charged the Department \$410.75 for the Court Reporter's attendance, a transcript of the proceedings and a CD ROM.

CONCLUSIONS OF LAW

Based on the above-listed Findings of Fact and the entire Record in this matter the Hearing Officer offers the following Conclusions of Law to the Director of Insurance.

- 1) Louis Butler was duly appointed Hearing Officer in this matter pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402).
- 2) The Director of Insurance has jurisdiction over the subject matter and the parties in this proceeding pursuant to Sections 401, 402, 403 and 500-70 of the Illinois Insurance Code (215 ILCS 5/401, 5/402, 5/403 and 5/500-70) and Section 10-65(c) of the Illinois Administrative Procedure Act (5 ILCS 100/10-65(c)).
- 3) The purpose of this proceeding was to determine the Respondent's eligibility to hold an Illinois Insurance Producer's license and to determine whether the Director's Order of Revocation of the Respondent's license should stand.
- 4) In its Order of Revocation and Notice of Hearing, the Department alleged that the Respondent on March 8, 2007 had been convicted of a felony, stalking, which is a ground for revocation pursuant to Section 5/500-70(a)(6) of the Illinois Insurance Code (215 ILCS 5/500-70(a)(6)). The Department also alleged Respondent had obtained or attempted to obtain a license through misrepresentation or fraud, which is a ground for revocation pursuant to Section 5/500-70(a)(3) of the Illinois Insurance Code (215 ILCS 5/500-70(a)(3)).

Section 5/500-70(a) provides:

License denial, nonrenewal or revocation. (a) the Director may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with this Section or take any combination of actions, for any one or more of the following causes:

Section 5/500-70(a)(3) provides:

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obtaining or attempting to obtain a license through misrepresentation or fraud.

Section 5/500-70(a)(6) provides, inter alia:

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(6) having been convicted of a felony;

Section 5/500-70(d) of the Illinois Insurance Code provides that:

In addition to or instead of any applicable denial, suspension, or revocation of a license, a person may, after hearing, be subject to a civil penalty of up to \$10,000 for each cause for denial, suspension, or revocation, however, the civil penalty may total no more than \$100,000.

The Illinois Administrative Code, 50 Ill Admn. Code §2403 establishes standards for review of producer licenses or license applications with respect to those producers (and applicants) who have been convicted of a felony. Section 2403 provides that a number of factors are to be considered by the Director in determining the appropriate action. The standards of Section 2403.30 provide:

2403.30 Review Standards

Section 500-70 of the Illinois Insurance Code allows the Director to place on probation, suspend, revoke, or refuse to issue an insurance producer's license, levy a civil penalty, or take any combination of the preceding actions when the producer has been convicted of a felony [215 ILCS 5/500-70(a)(6)]. When so reviewing producer licenses or license applications involving producers who have been convicted of a felony, the Director shall consider the following factors in determining the appropriate action:

- a) Nature and Severity of the Criminal Activity.
- b) Time Elapsed Since the Prior Criminal Conduct.

- c) Absence of Additional Criminal Conduct Since the Reported Felony.
- d) Multiple Offenses or Pattern of Criminal Conduct.
- e) Restitution.
- f) Proper Disclosure.
- g) Successful Completion of Sentence and Probationary Period.
- h) Rehabilitation.
- i) Nature of Work Performed by the Applicant or Producer.
- j) Any Other Facts or Circumstances Deemed Relevant by the Director.

Section 2403.30(a)- Nature and Severity of the Criminal Activity.

The Respondent's crimes were not violent in nature. Respondent's testimony indicates that he was involved in a business dispute that resulted in his stalking conviction. The other conviction he admitted to involved lewd conduct. Section 2403.30(a) provides that when viewing this factor violent criminals may be denied producer license privileges.

Section 2403.30(b)- Time Elapsed Since the Prior Criminal Conduct.

The Respondent was convicted in March 2007 and originally sentenced to 36 months probation. Respondent's parole does not end until approximately March 2010. Section 2403.30(b) notes that when judging this factor, the duration of time since the criminal activity should be proportionate to the severity of the criminal conduct. As previously mentioned, the crime in this matter was not violent. However, because Respondent is just coming off is probationary period I conclude that the Respondent is not far removed from his criminal activity.

Section 2403.30(c) Absence of Additional Criminal Conduct Since the Reported Felony.

There is no indication that Respondent has engaged in any criminal activity since his felony and release from prison.

Section 2403.30(d) Multiple Offenses or Pattern of Criminal Conduct.

There is no indication that Respondent has engaged in any criminal activity since his felony. However, Respondent was previously convicted of lewd conduct. Because he did not disclose this on either of his applications the Department was not able to determine prior to the hearing if this conduct was a felony in California.

Section 2403.30(e)-Restitution

Respondent testified that he satisfied court ordered restitution in this matter.

Section 2403.30(f)-Proper Disclosure.

The Respondent was untruthful on his insurance producer application in answering the question about his felony convictions. The Department became aware of the conviction because he later admitted the information on his application was inaccurate.

Section 2403.30(g)- Successful Completion of Sentence and Probationary Period.

As previously stated, Respondent's probation does not end until approximately March 2010.

Section 2403.30(h)- Rehabilitation

Post conviction community service or charitable activity by the applicant may serve as evidence of rehabilitation. There is no evidence that there was court ordered community service nor any evidence of community service. Respondent did testify that he attends church.

Section 2403.30(i)-Nature of Work Performed by the Applicant

The Respondent testified that he has a job opportunity, but is otherwise not gainfully employed at the current time.

In considering the factors of Section 2403.30, Respondent would still be a risk to the public in holding an Illinois insurance producer's license. Particularly troubling to the Hearing Officer is: 1) the fact that Respondent has just recently completed his probationary period, and 2) that Respondent intentionally supplied false information on two applications. In one instance Respondent states he was told to lie and in another instance he claims he lied because he was stressed after taking the producers examination.

The Illinois courts have addressed the issue of felony review and the rehabilitation from a felony in the context of licensing as an insurance producer. In Medley v. Department of Insurance, 223 Ill. App. 3d 813, the court stated that "the type of rehabilitation required here is such that the licensee can be trusted to engage in selling and securing of insurance policies which may be intricate and involve insureds or prospective insureds who lack sophistication in such matter." The Court further stated that a person seeking to show rehabilitation should appear contrite in nature and should indicate ways he had changed since the conviction. Respondent showed no evidence of rehabilitation. Respondent did not appear contrite as a result of the actions that led to his conviction.

The Hearing Officer concludes that these two factors outweigh any other evidence of the Respondent's compliance with 50 Ill. Adm. Code 2403 submitted in this matter.


Based on the record as a whole, the Hearing Officer concludes that Respondent has not demonstrated sufficient rehabilitation. The Department has provided ample evidence that Respondent violated Sections 500-70(a)(3) and 500-70(a)(6) (215 ILCS 5/500-70(a)(3) and 215 ILCS 5/500-70(a)(6).

RECOMMENDATIONS

Based upon the above-stated Findings of Fact, Conclusions of Law and the entire Record in this matter, the Hearing Officer offers the following Recommendations to the Director of Insurance:

- 1) That the Director's Order of Revocation be sustained; and
- 2) That the costs of this proceeding be waived.

Date: March 9, 2010



Louis Butler
Hearing Officer